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ABSTRACT

Advice for effectively utilizing the school attorney is presented in this paper, which focuses on three considerations: the retainer, reliance, and relationships. The first part offers suggestions for retaining a quality lawyer for the best value and cost-cutting ideas for the school district. A caution is that excessive cost-cutting may compromise quality. The discussion of reliance offers reasons for retaining a school law specialist, who can provide quality services at a fair price. In regard to relationships, the attorney should be compatible with the collective personality of the school district and perform the role of evaluator and consultant. (LMI)

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HOW TO BEST USE YOUR SCHOOL ATTORNEY

Presented by: Robert T. Baker
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The Three R's of School Lawyering

Retainer---

Reliance---

Relationship---

I. RETAINER---

First to discuss ----**NOT** because I believe fees **should** be the primary consideration in the initial choice or continued relationship between client/lawyer--- but because I recognize that the fees charged by a lawyer usually **are** first on the client's or prospective client's mind when shopping for a lawyer.

Please don't misunderstand. Bargain shopping is nothing to apologize for and as public officials you have an obligation to get the most out of the dollars you spend. Nobody likes to pay attorney fees any more than lawyers like to pay doctor fees. But a bargain is defined as **something whose value to the purchaser considerably exceeds its costs.** And I am here to suggest that poor legal advice is never a bargain regardless of how little you pay for it.

I am among the first to acknowledge that attorney's fees are not cheap --- therefore it becomes extremely important to get the most for your litigation dollar.

One of the most common index of legal fees is felt to be the amount of the lawyer's hourly rate. But it should be keep in mind that the hourly rate is at best only a modest indicator of ultimate cost of legal services --- the bottom line is the hourly rate times the total number of hours spent on the activity. To this product is

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multiplied that very important but often difficult to determine factor--- the quality of the legal services performed.

It is no secret that most folks don't enjoy paying attorney fees. You know that, I know that and so does every other lawyer so you should not feel uncomfortable about discussing fees with your attorney. Most attorneys would much rather be challenged and afforded the opportunity to explain the fees than having a dissatisfied client without ever knowing why--- **or worse still** ---having the client not say anything to you but tell others that you overcharge.

Some cost-cutting ideas-

* discuss with your attorney the level of preparation desired--thorough, professional quality v. overkill--

  no substitute for solid preparation but...

* practice of using junior associates--

  many instances - good practice (although some clients perceive this to be "handed-off" and are offended)

  - to have a second lawyer knowledgeable about file - the unexpected often happens: illness, trial conflict, out-of-office, etc.
  - to have a second set of hands and ears at trial and some administrative hearings
  - case preparation (or brief writing) when the junior is qualified for the assignment (but always be under the supervision of the senior lawyer)--should result in dollar savings to client
  - it is the way junior lawyers become senior lawyers
  - but extremely poor practice when "featherbedding" as a way to build billable hours

* Give your attorney as much lead time as possible-- all too often the call comes at the last minute (1) leaving insufficient time to do the necessary research and file review--- or in the alternative--- (2) having

to draw at the last minute other lawyers into the case which usually results in duplicated effort and other inefficiencies.

* Don't attorney "shop" every time your district has a legal problem- pick your attorney with care and then go with him/her until there is a **reason** to change.
  - lawyering is highly competitive-- we all want to earn your business but we are in a business too and ours is supposed to be a business for profit; our regular (faithful) clients get (and deserve) our top attention.
  - clients too often pressure the lawyer to meet the competitor's price-- there certainly is nothing wrong with going with the **lowest** and **best** bid but selecting your attorney by the **lowest** bid alone is a disservice both to attorney and client; the temptation will be to cut corners on the delivery of service and in the end this dilutes the quality of legal service provided to the consumer and ultimately leads to the destruction (professional reputation or financial or both) of the legal provider;
  - competition is great-- the American way -- and perhaps long overdue in the legal profession-- -- but it is good **only** so long as it begets **quality** legal services--
* Let your superintendent know its OK to get help and to get help early.
  - I think most boards of education expect far too much of their superintendents when it comes to their understanding of school law
  - it is unrealistic to expect a superintendent to keep abreast of all the nuances of every facet of school law
  - what we do have a right to expect of our chief executive is to recognize when a potential legal issue arises and to call for help when he/she gets in over his/her head

- I've been school lawyering now for nearly 35 years and there is hardly a day that I don't have an application of a legal issue that I've never encountered before--- and I do this full time!

II. RELIANCE

What you should be looking for is a lawyer or a law firm that day in and day out can give your school district quality legal services at a fair price. It is at this point that you should carefully weigh the pros and cons of retaining a school law specialist. School law is sufficiently a specialty in itself that the general practitioner, or a firm specializing is an area other than school law, will have limited, if any, experience in school law. As in other professions, specialists tend to be able to command larger fees than non-specialists. However because of this acquired expertise, the school lawyer should be able to deliver high quality legal services in less billable hours than the non-specialist. There is no substitute for experience and hard work. The question asked today of the school law specialist probably has been asked, researched and answered on numerous previous occasions. You, the school client, get the advantage of this previous experience through quicker, cheaper and higher quality legal services. All this **should** translate to lower legal fees. If it doesn't, you are getting short changed. While you generally get what you pay for--- you certainly are entitled to everything you **are** paying for.

As always the case, there are exceptions to the rule. Occasionally, a bona fide "expert" gets lazy or greedy or both and puts out inferior service at overpriced fees. These folks are usually quickly identified and their professional reputations fade much more rapidly than they were built.

Also, there frequently are bright, up-and-coming lawyers who are trying to make their place in the sun who are willing to spend countless hours on a legal issue and personally absorb much of the otherwise billable time "for the experience." Most all of us have paid our dues in this manner but even the brightest of these youngsters most often need the counsel and direction of an "old head".

But there is one thing for which we can be grateful. Thanks to such organizations as NSBA's Counsel of School Board Attorneys, boards of education are fortunate to have many outstanding school lawyers in every state to serve them well and to serve them cost efficiently.

Don't misunderstand-- there are many fine attorneys in the general practice of law who can provide your district with effective representation--- but I would guess that on a day-to-day basis it would be more cost efficient to have as your counsel someone who most probably has encountered your particular issue on several prior occasions.

Just like in anything else, if one directs his or her entire efforts to a single cause, the chances of that person becoming more proficient in the area than the non-specialist is most significant.

It is also important that your lawyer be available to you-- not necessarily always there awaiting your call, but reasonably available within several minutes or a few hours -- depending upon the urgency of the circumstances.

- Here the **firm** of school law specialists have a decided advantage. In the firm, most likely another lawyer will be on hand and available to pinch-hit for your regular attorney when you have those emergencies that just can't wait.

Just like the TV commercial suggests-- it is somewhat more comforting to be sued when you know that you are in "Good Hands."

III. RELATIONSHIPS---

My personal view is that the client/attorney "relationship" is nearly as important of a consideration as the expertise of the attorney.

The client-attorney relationship is very special and quite often very personal because there should be no "secrets" between client and attorney. Legal issues are frequently highly emotional issues and often played for high stakes--whether in dollars or in weaving another thread in the moral fabric of the district, for the principle of the thing. Because we are human, we, as school officials (lawyers too),

do make mistakes in judgment yet it is not easily accepted to have been proven wrong. You all want to feel that your lawyer is the best in the business and are confident that you are getting your money's worth.

It is, in my view, essential that you feel "comfortable" with counsel (and to me, being "comfortable" is the best way to describe this relationship). I believe that your attorney should be someone who blends well with the collective personality of your board and administrators.

There is a great deal to be said about the advantage of the attorney knowing the board and the individual members, the superintendent, the building administrators. In the labor relations area, it is particularly important to be very familiar with the district's collective bargaining agreement and understanding the "temperament" of the union leadership. All of this "district background" greatly assists in the effective and cost efficient representation of the district.

In school law generally-- and collective bargaining in particular-- there are few "absolutes." Rarely can counsel tell you with complete assurance the absolute legal consequences of a given course of action. Most often the counsel that is given can be nothing more than an educated guess as to how a court or arbitrator might rule on a given legal issue. In most instances the attorney must deal in probabilities-- what is the **likely** consequence if a certain action (or no action) is taken. Because of this circumstance, it is extremely important for the mental health of all concerned for each to have complete confidence in the other. It may not always work out the way we had hoped, but we--- client and attorney--- must have the rapport to generate the satisfaction of knowing that we gave it our very best. None of us can ask for much more than that-- except, perhaps, a substantial measure of good fortune!

This lawyer's advice on how to use other lawyers' advice--

A former school superintendent and colleague once told me that if you let a lawyer in the school house, before long he would have the keys to the school house door as well as to the executive washroom.

This was his way of saying that school lawyers really didn't want to **advise** but rather wanted to **dictate** how the school client's affairs should to be conducted.

There probably is more than just a little truth to this observation. Some lawyers have difficulty in first identifying their appropriate role and then limiting themselves to that role. Then too, a few boards of education and administrators are all too willing to step aside and let someone else make the hard decisions.

But the attorney's role is to evaluate and advise-- to (1) layout the legal alternatives, (2) calculate the risks involved, and (3) assess the probable legal consequences of each alternative. The board and superintendent should receive such advice and consider it in the same manner as they would of that of any other professional consultant. But it is the board and the administration, not the school lawyer, that must make the final decision. Many times the prospect of the educational gains are well worth the legal risks taken.

Thank you for your attention and have a great conference!